STATE OF MICHIGAN

COURT OF APPEALS

FRANK NALI, Plaintiff-Appellant,	UNPUBLISHED March 23, 2006
v	No. 258805 Wayne Circuit Court
IRA HARRIS, Defendant-Appellee.	LC No. 03-328780-CZ

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff, acting in propria persona, appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Defendant represented plaintiff in a criminal matter in which plaintiff was convicted of extortion. Plaintiff subsequently filed this action against defendant, alleging nine different theories of liability, including professional negligence. After the discovery period ended, defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff would not be able to show that he would have prevailed in the criminal matter but for defendant's alleged negligence, because plaintiff had not obtained an expert witness.[1] The trial court granted the motion.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact and the moving party is entitled to judgment . . . as a matter of law." This Court reviews the grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[1] Although plaintiff asserts that he opposed defendant's motion with an affidavit, the lower court docket entries do not indicate that plaintiff filed either a response to defendant's motion or an affidavit.

Plaintiff argues that defendant is "fundamentally wrong" in asserting that he was required to present expert testimony to show that he would have been acquitted but for defendant's alleged negligence.

In order to establish a claim of legal malpractice, a plaintiff must prove: "(1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent of the injury alleged." *Charles Reinhart Co v Winiemko,* 444 Mich 579, 585-586; 513 NW2d 773 (1994) (citation and internal quotation marks omitted). Generally, expert testimony is necessary to establish a standard of conduct, breach, and causation. *Law Offices of Lawrence J Stockler, PC v Rose,* 174 Mich App 14, 48; 436 NW2d 70 (1989). However, "[w]here the absence of professional care is so manifest that within the common knowledge and experience of an ordinary layman it can be said that the defendant was careless, a plaintiff can maintain a malpractice action without offering expert testimony." *Id.*, citing *Joos v Auto-Owners Ins Co,* 94 Mich App 419, 422-424; 288 NW2d 443 (1979).

The allegations in plaintiff's amended complaint range from lack of preparation (e.g., defendant's failure to communicate with plaintiff, conduct pretrial investigation, or obtain copies of prosecution exhibits), defendant's alleged unfamiliarity with the law, and failure to present a defense theory, to matters of trial strategy (failure to effectively cross-examine witnesses, object during trial, call defense witnesses, or request appropriate jury instructions). Because these allegations involve questions of professional judgment and trial strategy that are beyond the knowledge and experience of a layperson jury, they fall within the general rule, and expert testimony is required.

Plaintiff argues that his allegations that defendant breached the "Professional Code of Conduct" created a rebuttable presumption of legal malpractice. He implies that expert testimony was therefore unnecessary. However, mere allegations of breaches of disciplinary rules do not avoid the need for expert testimony. *Beattie v Firnschild,* 152 Mich App 785, 792-793; 394 NW2d 107 (1986).

Plaintiff also contends that defendant and the trial court cannot rely on his failure to provide an expert as a basis for granting defendant's motion because the trial court denied his motion for appointment of an expert "as suggested by MRE 702 and section 13 of the 1981-7 Administrative Orders of the Supreme Court." The cited administrative order concerns appointment of appellate counsel for indigents in *criminal* cases and minimum standards for the criminal appellate defense services. Neither the administrative order nor MRE 702, the evidentiary rule governing testimony by experts, authorizes a court to appoint an expert at public expense to assist an incarcerated individual in a civil matter.

Plaintiff also argues that it was improper to dismiss his entire complaint on the basis of the absence of an expert. Plaintiff failed to preserve this argument because he did not raise it below. An issue not raised before and considered by the trial court is generally not preserved for appellate review. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). When defendant filed his motion for summary disposition and sought dismissal of plaintiff's entire action, it was incumbent on plaintiff to respond and differentiate his other

claims from the legal malpractice claim. He failed to do so and may not do so now for the first time on appeal.

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra